

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District <b>Massachusetts</b>
Name <b>Michael Garner</b>	Prisoner No.	Case No. <b>HDCR1998-2630&amp;2666</b>
Place of Confinement <b>MCI - Shirley (Medium), Harvard Road, P.O. Box 1218 Shirley, Massachusetts 01464-1218</b>		
<b>05 - 30035 - MAP</b>		
Name of Petitioner (include name under which convicted) <b>Michael Garner</b>	Name of Respondent (authorized person having custody of petitioner) <b>Michael A Thompson, Superintendent of MCI - Shirley (Medium)</b>	

v.

The Attorney General of the State of:

**PETITION**

- Name and location of court which entered the judgment of conviction under attack Hampden County  
Superior Court, 50 State Street, Springfield, MA 01102-0559
- Date of judgment of conviction September 7, 1999 (current charges), November 29, 1999  
(conviction of three prior serious crimes)
- Length of sentence two concurrent sentences of 15 years to 15 years and one day, MCI- CJ
- Nature of offense involved (all counts) Two counts, Unlawful possession of a Firearm or Ammunition  
Without Identification Card, G.L. c.269, section 10(h); 10G(c) having previously been convicted  
of three violent crimes or three serious drug offenses or any combination thereof
- What was your plea? (Check one)
 

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  

N/A
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury	<input type="checkbox"/>
(b) Judge only	<input checked="" type="checkbox"/>
- Did you testify at the trial?  
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court Massachusetts Appeals Court

(b) Result Judgement Affirmed

(c) Date of result and citation, if known November 16, 2003, 59 Mass. App. Ct. 1111 (2003)

(d) Grounds raised Same as in instant petition; i.e. violation of due process where conviction based on facts which did not constitute the crime charged; ineffective assistance of counsel for failure to object to inadmissible hearsay and file motion for required finding of Not Guilty

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court Supreme Judicial Court of Massachusetts

(2) Result Further Appellate Review Denied

(3) Date of result and citation, if known December 29, 2003; Docket # FAR-13804

(4) Grounds raised Same as in Appeals Court (see above) and in this petition

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A

(2) Result \_\_\_\_\_

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Hampden Superior Court

(2) Nature of proceeding Motion for a New Trial

(3) Grounds raised Ineffective assistance of counsel (federal and state due process violation).  
Inadmissible hearsay

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Motion Denied

(6) Date of result August 26, 2002

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Name of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The defendant's Federal due process rights were violated when he was  
convicted in a jury waived trial on facts which did not constitute the crime charged.

Supporting FACTS (state *briefly* without citing cases or law): An individual other than the defendant  
was seen in possession of a firearm shortly before police entered an apartment where with the  
aid of flashlights they observed said firearm upon and amongst clothes on the floor about  
three feet inside a doorless 6.5ft. by 3ft. closet. When the officer entered the closet to  
retrieve the firearm he stepped on the defendant who was secreted under a pile of clothes.

B. Ground two: The defendant's trial counsel was ineffective when he failed, at the enhanced  
sentencing trial, to object to inadmissible hearsay and/or to file a motion for a required finding of NC

Supporting FACTS (state *briefly* without citing cases or law): Evidence by the Commonwealth's  
fingerprint expert, unobjected to, and admitted by the judge on the ground that an expert  
may rely on evidence independently admissible under the business records exception,  
identified an individual who had been previously booked (and convicted) of three prior offenses  
as the same individual who was booked on November 6, 1998. However, no evidence was  
introduced, at the enhanced sentencing trial, that the individual booked on November 6, 1998  
was convicted of any subsequent offense.

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C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mickey E. Harris, Esq., 1350 Main Street, Springfield, MA 01103

(b) At arraignment and plea Same

- (c) At trial Same as(a)
- (d) At sentencing Same as (a)
- (e) On appeal Edward B. Gaffney, Esq., P.O.Box 5092, Wayland, MA 01778
- (f) In any post-conviction proceeding Same as (e)
- (g) On appeal from any adverse ruling in a post-conviction proceeding Same as (e)

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Thomas D. Turner 1/29/05  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/21/04  
Date

Michael S. Turner  
Signature of Petitioner

<b>NOTICE OF ASSIGNMENT OF COUNSEL</b>		<b>Assignment Number</b> C8002845-4		<b>COMMONWEALTH OF MASSACHUSETTS</b>	
<b>Date of Assignment</b> 8/13/2004	<b>Judge</b> CPCS	<b>Court</b> Hampden Superior Court	<b>Jury Session</b> <input type="checkbox"/>		

<b>Name of Person for whom counsel assigned</b> Michael Garner
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<b>Juv/Adult</b>	
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<b>Docket No.</b>	98-2630, 98-2666
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The court has found the above-named person:

<b>Incarceration Status</b>
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MCI-Shirley Medium

**Indigent** ☒  
**Contribution**

**Post-Trial Criminal Case Purpose Of Assignment**

Federal Habeas

**Offense / Charge**

701 Poss. FA w/o ID, Subsq.

**Attorney Assigned**

<b>BBO</b>	562153
<b>Name</b>	Thomas Turner
<b>Address</b>	P.O. Box 152
	Spruce Head, 04859
<b>Phone</b>	(207) 594-0960

Authorized Signature

*Denise Simonini*

Denise Simonini

Friday, August 13, 2004